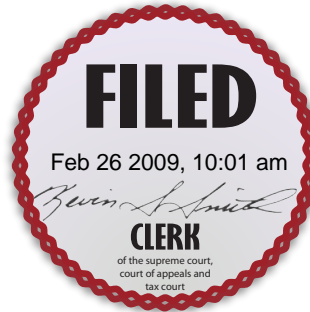


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DANIEL RICHARDSON a/k/a
DANIEL COCKRELL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A03-0811-CR-562

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0405-FB-70

February 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Daniel Richardson, a/k/a Daniel Cockrell (“Daniel”), appeals the revocation of his probation. We affirm.

Issue¹

Whether the trial court abused its discretion in revoking Daniel’s probation.

Facts and Procedural History

On November 30, 2005, Daniel pled guilty to Rape, as a Class B felony.² The trial court sentenced Daniel to fifteen years, all of which was suspended to probation. As a condition of probation, Daniel was to be in the care of Pastor Robert Wheeler and was to continue to work with a group of specifically mentioned individuals regarding his mental health treatment.

On August 31, 2007, a Petition to Revoke Probation was filed, alleging that Daniel had left Wheeler’s home and that his whereabouts were unknown. A bench warrant was issued for Daniel. On February 26, 2008, Daniel admitted the violation. The trial court entered the finding that Daniel violated his probation. However, disposition was continued until April 14, 2008, in order for Daniel to complete a psychological evaluation to determine

¹ Daniel also requests that this Court review his reinstated sentence pursuant to Indiana Appellate Rule 7(B). As probation is a matter of grace and left to the trial court’s discretion, Appellate Rule 7(B) is not an applicable standard of review for probation revocation appeals. See Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007).

² Ind. Code § 35-42-4-1(a).

the veracity of sexual abuse allegations that Daniel made against Wheeler³ and what sentencing provisions and services were available for his circumstances.

On August 19, 2008, the probation revocation hearing was held. After hearing the evidence, the trial court revoked Daniel's probation and ordered him to serve his fifteen year sentence in the Department of Correction. The trial court included in its order a request that a psycho-sexual evaluation be conducted on Daniel and for him to be placed in a treatment program, including transfer to a state mental hospital if possible.

Daniel appeals.

Discussion and Decision

Our Supreme Court recently explained:

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. Sanders v. State, 825 N.E.2d 952 (Ind. Ct. App. 2005). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Ind. Code Ann. § 35-38-2-3 (West 2007); Goonen v. State, 705 N.E.2d 209 (Ind. Ct. App. 1999). Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. See Sanders, 825 N.E.2d at 956. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Guillen v. State, 829 N.E.2d 142 (Ind. Ct. App. 2005).

³ These allegations were never clarified because Daniel was uncooperative during the evaluation in answering questions about his sexual behavior and the alleged actions of Wheeler.

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Under Indiana Code Section 35-38-2-3(g), if a court finds that a defendant has violated probation, the court may (1) continue probation, with or without modifying or enlarging conditions; (2) extend the probationary period for not more than one year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing. Here, the trial court ordered execution of Daniel's entire suspended sentence.

Daniel argues that the order to execute his entire suspended sentence was an abuse of discretion because psychological evaluations have established a pattern of severe mental illness and that his violation of probation was due to the absence of his caretaker, Wheeler. According to the testimony of Daniel's aunt, Wheeler was admitted to the hospital to have his leg amputated. While Wheeler was in the hospital, a neighbor checked in on Daniel. At some point in time, Daniel left Wheeler's home and failed to report to his probation officer. Subsequently, Daniel contacted his aunt, requesting to stay with her. Daniel's aunt testified that she tried to take Daniel to report to his probation officer, but Daniel refused, stating that his probation officer would not believe him. Daniel was out of contact for four months.

The trial court did not abuse its discretion in revoking Daniel's probation. Daniel admitted to violating his probation. In originally sentencing Daniel, the trial court extended a great deal of grace to Daniel in suspending his entire sentence for such a heinous crime and attempted to create an environment that would support Daniel. While it is clear that Daniel has mental challenges, he at least understood the requirements to stay with Wheeler and

report to his probation officer. Even in the care of his aunt, Daniel refused to meet with his probation officer. Furthermore, the trial court's order seeks to provide Daniel with the needed treatment by suggesting to the Department of Correction that Daniel should be given a psycho-sexual evaluation and that he be placed in a treatment program, including transfer to a state mental hospital if possible. We conclude that the trial court has not abused its discretion in revoking Daniel's probation.

Affirmed.

MATHIAS, J., and BARNES, J., concur.